

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

**MATTHEW R. DUGGER,**

Plaintiff,

V.

## EDDIE STILTNER,

Defendant.

Case No. 1:23CV00037

## OPINION AND ORDER

JUDGE JAMES P. JONES

*Matthew R. Dugger, Pro Se Plaintiff; Christopher P. Bernhardt, Assistant Attorney General, OFFICE OF THE VIRGINIA ATTORNEY GENERAL, Richmond, Virginia, for Defendant.*

The self-represented plaintiff brings this action under 42 U.S.C. § 1983 against the defendant, a state magistrate, alleging that the defendant violated his constitutional rights by issuing an Emergency Protection Order in connection with a child custody dispute. The plaintiff seeks monetary damages, the defendant's resignation, and leave to amend the Complaint. The defendant has moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, and 12(b)(6) for failure to state a claim.

Even accepting the plaintiff's allegations as true, judicial officers are absolutely immune from civil liability for actions taken within their official judicial capacity provided the judicial officer acted within his jurisdiction. *Stump v. Sparkman*, 435 U.S. 349, 355–357 (1978). Virginia law authorizes magistrates to

issue emergency protective orders. Va. Code. Ann. § 16.1-253.4. While acting within his judicial role, the defendant issued the order in question, making him immune and preventing this action from proceeding. Amending the Complaint would be futile. Thus, I will grant the defendant's motion to dismiss for failure to state a claim, and I will deny the plaintiff's request to amend the Complaint.

In accordance with the foregoing, it is **ORDERED** that the plaintiff's motion to amend the Complaint, ECF No. 9, is **DENIED**. The defendant's Motion to Dismiss, ECF No. 7, is **GRANTED**.

A separate Judgment will be entered herewith.

ENTER: November 6, 2023

/s/ JAMES P. JONES  
Senior United States District Judge